

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/777,184
Applicant: Leonard FRENKIL
For: SEALABLE BAG WITH EXCESS AIR EVACUATION
BLOCKING STRUCTURE
Confirmation No.: 1942
Customer No.: 33694
Docket No.: 24988/00101
Filed: February 13, 2004
Group Art Unit: 3728
Examiner: Jerrold D. Johnson
Date Allowed: October 17, 2007

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT

Applicant hereby requests under 37 C.F.R. §1.705(b) reconsideration and correction of the patent term adjustment for the above-referenced patent application. Specifically, Applicant requests that the patent about to issue from the present case receive a patent term adjustment of +363 days.

In preparing to pay the issue fee, the undersigned reviewed the patent term adjustment indicated on the notice of allowance and information available through the PAIR system. It is respectfully submitted that the patent term adjustment information is incorrect.

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Pursuant to 37 C.F.R. §1.703 the term of a patent may be adjusted due to delay in examination. Specifically, the patent term is adjusted by the number of days a first office action or notice of allowance is delayed beyond fourteen months from the filing date of the application. For the present application, as shown in the PAIR system, the relevant dates and adjustment are:

Filing Date:	February 13, 2004
Fourteen months(35 U.S.C. §154(b)(1)(i)):	April 13, 2005
First Office Action (Restriction Requirement):	May 4, 2006
Adjustment:	+386 days

Pursuant to 37 C.F.R. §1.704, the amount of any adjustment is reduced by any periods of time in which the applicant fails to engage in reasonable efforts to conclude prosecution of the application. This includes any delay beyond a total of three months to respond to an office action (37 C.F.R. §1.704(b)). Based on this, an incorrect calculation of a reduction in the term adjustment by the Office based on Applicant's response to the First Office Action (Restriction) was apparently determined as follows:

First Office Action (Restriction):	May 4, 2006
Three months:	August 4, 2006
Response indicated as received:	December 7, 2006
Adjustment:	-125 days

However, this calculation is erroneous. A Response to Restriction Requirement was mailed on August 2, 2006 and received by the Office on August 8, 2006. The Office apparently misplaced this copy of the Response as the undersigned was contacted and asked to fax another copy to the Office on December 7, 2006, which was accomplished. Applicant should not be charged for the delay due to the misplaced original Response. That original Response, as shown on the date-stamped post card that the Office returned upon receipt, was received by the Office on August 8, 2006. While the Response did contain a typographical error in the application number, all other identifying information was correct and, regardless,

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the Office never designated the Response as non-compliant. Thus, the above reduction should be recalculated as follows:

First Office Action (Restriction):	May 4, 2006
Three months:	August 4, 2006
Response received:	August 8, 2006
Adjustment:	-4 days

Because the original Response to Restriction Requirement was fully compliant and received by the Office on August 8, 2006, an additional term extension should be added based on the subsequent Office Action. The relevant dates are as follows:

Response to Restriction Requirement:	August 8, 2006
Four Months (35 U.S.C. §154(b)(1)(ii)):	December 8, 2006
Non-Final Office Action:	February 23, 2007
Adjustment:	+77 days

However, Applicant also notes that the Office did not allocate a reduction in the term adjustment by the Office, based on Applicant's response to the Non-Final Office Action mailed February 23, 2007, pursuant to 37 C.F.R. §1.704(b) for any delay beyond a total of three months to respond to an office action. Applicant's Response to this Non-Final Office Action was received by the Office on August 27, 2007. Based on this, a correct calculation of a reduction in the term adjustment by the Office based on Applicant's response to the Non-Final Office Action appears to be as follows:

Non-Final Office Action:	February 23, 2007
Three months:	May 23, 2007
Response indicated as received:	August 27, 2007
Adjustment:	-96 days

In summary, Applicant respectfully asserts that the total term adjustment should be:

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Adjustment for initial Office Action (Restriction):	+386 days
Adjustment for Response to Restriction:	-4 days
Adjustment for Non-Final Office Action:	+77 days
Adjustment for Response to Non-Final Office Action:	-96 days
Total	+363 days

Accordingly, pursuant to 37 C.F.R. 1.702, Applicant hereby requests a patent term adjustment of +363 days.

This patent is not subject to a terminal disclaimer (37 C.F.R. §1.705(b)(1)(iii)).

The fee in the amount of \$200.00 under 37 C.F.R. § 1.18(e) is to be charged to Sidley Austin LLP's Deposit Account No. 18-1260. Please charge any shortage or other fee due with the filing of these papers to Sidley Austin LLP's Deposit Account No. 18-1260. Please credit any overpayment to Sidley Austin LLP's Deposit Account No. 18-1260.

Respectfully submitted,

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January 8, 2008